

The Honorable Robert Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOHAMED A. HUSSEIN, an individual, and  
HASSAN HIRSI, an individual,

Plaintiffs,

v.

AIR SERV CORPORATION, a foreign  
corporation,

Defendant.

Case No. 2:16-cv-00278 RSL

**MOTION FOR FINAL APPROVAL OF  
SETTLEMENT**

NOTE ON MOTION CALENDAR:  
December 5, 2018 at 10:30a.m.

**I. INTRODUCTION.**

Class Representatives Mohamed A. Hussein, Hodan A. Dahir, and Mohamed Yusuf, by and through Counsel for the Class, Badgley Mullins Turner, PLLC and the Law Office of Daniel Whitmore (“Class Counsel”), respectfully submit this Motion for Final Approval of the Settlement.<sup>1</sup> Class Members have received reasonable notice of the proposed settlement and the opportunity to exercise their right to opt-out or object.

Attorney David Mark has submitted documentation to the Court and third-party administrator Simpluris, Inc. (“Simpluris”) in which seventy-eight (78) Class Members seek to opt-out of the *Hussein* settlement. Dkts. #59 & 61. Mr. Mark has also filed three actions against

<sup>1</sup> Unless otherwise provided herein, all capitalized terms in this Motion shall have the same meaning as set forth in the Order Granting Preliminary Approval of Class Action Settlement. Dkt. #44.

1 Defendant ABM Aviation, Inc. (formerly operating as Air Serv Corporation) (“Defendant”) in  
 2 state court on behalf of sixty of these Class Members. Dkt. #56-1. Defendant has objected to the  
 3 sufficiency of these opt-outs and has moved the Court for an Order to Show Cause. Dkts. #55,  
 4 63, & 64. That motion has been fully briefed by the interested parties and is presently pending  
 5 before this Court.

6 The issues before the Court on final approval are separate and distinct from those raised  
 7 in Defendant’s Motion to Show Cause. Dkt. #55. Regardless of how the Court decides  
 8 Defendant’s pending Motion to Show Cause, the Parties have completed the Court-ordered notice  
 9 program, and the settlement is fair and reasonable for remaining Class Members. As such, Class  
 10 Counsel respectfully requests the Court grant final approval.  
 11

## 12 II. FACTS.

13 This action was originally filed in King County Superior Court on January 20, 2016. Dkt.  
 14 #1-2. Defendant removed the case to federal court on February 25, 2016. Dkt. #1. Between May  
 15 2017 and November 2017, counsel for the Parties participated in earnest and arms-length  
 16 settlement negotiations including a full-day mediation on November 2, 2017. On or around  
 17 March 22, 2018, the Parties entered into a long-form settlement agreement (the “Settlement  
 18 Agreement”). Dkt. #33. Under the Settlement Agreement, Defendant agreed to pay Class  
 19 Members a maximum gross settlement amount of Three Million Seventy Thousand Three  
 20 Hundred Dollars and Thirty-Three Cents (\$3,070,300.33), inclusive of requested incentive awards  
 21 and attorney’s fees.  
 22

23 On March 23, 2018, Plaintiffs filed a Stipulated Motion for Preliminary Approval of Class  
 24 Action Settlement and Appointment of Class Representatives. Dkt. #32. That same day, Attorney  
 25 David Mark filed an objection on behalf of putative Class Member Abdisalan Fahiye addressing  
 26

1 perceived issues within the proposed class notice. Dkt. #35. On July 9, 2018, the Parties and Mr.  
2 Fahiye resolved the objection by proposing an Amended Class Notice. Dkt. #42. On July 27,  
3 2018, the Court granted preliminary approval of the settlement. Dkt. #44.

4 Beginning on August 31, 2018, Simpluris began mailing the approved Class Notice to the  
5 464 Class Members. Declaration of Mark Trivett, ¶2. Eighty-nine notices were returned as  
6 undeliverable. *Id.* After receiving the returned notices, Simpluris performed a search of the  
7 National Change of Address Database and skip-traced all eighty-nine addresses. *Id.* New mailing  
8 addresses were identified for seventy-seven individuals and notices re-mailed. *Id.* After two  
9 subsequent waves of mailing, Simpluris estimates 97.6% of Class Members received the mailing.  
10 *Id.*

11  
12 To date, no objections to the proposed settlement have been received. *Id.*, ¶3. As set forth  
13 in Defendant's pending Motion to Show Cause (Dkts. #55-65) the opt-out status of seventy-eight  
14 Class Members is in dispute.

### 15 III. DISCUSSION.

#### 16 A. Class Members Received Notice of the Settlement and the Opportunity to 17 Voluntarily Opt-Out.

18 In its July 27, 2018 Order, the Court set the guidelines for providing Class Members with  
19 notice of the Parties' proposed settlement. Since that time, Simpluris has diligently followed the  
20 Court's notice program, ensuring Class Members received adequate notice of the proposed  
21 settlement. Simpluris also took steps to identify new mailing addresses for unreachable class  
22 members. Attorney David Mark notified Simpluris that seventy-eight (78) Class Members desired  
23 to opt-out of the Settlement. The status of these seventy-eight Class Members remains to be  
24 decided by the Court. No Class Member has objected to the proposed settlement.  
25  
26

**B. The Settlement Remains Fair and Reasonable Despite the Opt-Outs.**

Per the Settlement Agreement, the Individual Allocable Shares for all putative class members are to be calculated based on the maximum settlement amount. If the Court allows the seventy-eight individuals to opt-out as requested by Mr. Mark, their Individual Allocable Shares will be deducted from the maximum settlement value. The Individual Allocable Shares of the Settling Class Members will be paid out, resulting in payment of approximately 97.8% of their back wages and sick pay, as set forth in the Class Notice.

The Class Notice distributed by Simpluris to Class Members included the following instructions and guidance:

If you are a Settling Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a letter or other written filing saying that you object to the Settlement. Be sure to include the following case caption and notation on the front page: "*Hussein et al. v. Air Serv Corporation, Case No. 2:16-cv-00278.*"

If you do nothing and you are a Settling Class Member, you will be deemed to have waived your right to litigate your case individually, and you will participate in the Settlement of the Action as described above in this Notice if the Settlement is approved.

Dkt. #42-1, pgs. 9-10 (portions omitted). To date, no Class Member has objected to the proposed class definition or allocation plan.

**IV. CONCLUSION.**

As the evidence attached to this Motion demonstrates, Class Members have been provided the opportunity to object or opt-out of the proposed Settlement. To date, the opt-out status of seventy-eight Class Members is currently in dispute. Because the Court's ruling on this subject does not materially affect the Individual Allocable Shares of the Class Members who did not opt-out, the settlement remains fair and reasonable. Therefore, Class Counsel moves the Court to: (1)

1 approve the class definition, (2) approve the proposed class action settlement, and find it fair,  
2 reasonable, and the result of arm's length negotiations, (3) order Defendant to fund the settlement,  
3 and (4) order Simpluris to distribute to the Settling Class Members.

4  
5  
6 DATED this 8<sup>th</sup> day of November, 2018.

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18 **Attorneys for Plaintiffs and Class**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8<sup>th</sup>, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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